UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Donald Stoltz,	:	
	:	
Plaintiff,	:	
	:	
v.	:	**No. 3:00cv466 (JBA)**
	:	
Fenn Manufacturing Company,	:	
	:	
Defendant.	:	

Memorandum of Decision [Doc. #25]

Donald Stoltz filed this suit against his former employer, Fenn Manufacturing Company ("Fenn"), a manufacturer of helicopter parts. His amended complaint alleges two causes of action under the Employee Retirement and Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq. ("ERISA"). Stoltz moved for summary judgment on the first count of his complaint, in which he alleges that Fenn has improperly refused to pay him short-term disability benefits.[1]

For the reasons set out below, the Court grants plaintiff's motion for summary judgment.

[1]The second count of the complaint, which alleges that Fenn "discharged the Plaintiff from his employment for the purpose of interfering with the Plaintiff's attainment of or entitlement to receive disability benefits," Substituted Am. Compl. ¶ 26, is not at issue in this motion.

I. Factual Background

A. The Plan

Fenn has a self-funded ERISA-regulated short term disability plan that provides up to twenty-six weeks of benefits to employees while they are disabled. The plan's benefit period depends upon the length of the disability, with a twenty-six week maximum, while the amount of benefits depends on the employee's length of service and salary.

The short term disability plan is set out in the Employee Handbook,[2] and in its entirety provides as follows:

> Should you become disabled and are unable to perform the duties of your occupation, you will be paid a disability income benefit for as long as you are disabled until at least age 65.
>
> Short term disability benefits begin on the day you are unable to work due to a non-occupational illness or injury and are paid for 26 weeks in accordance with the following schedule:
>
> [Years Full Pay 3/4 Pay 3/5 Pay]
>
> * * *
>
> 10 or more 26 - -
>
> Long term disability benefits begin when you have been disabled for 26 weeks. For a detailed explanation of this coverage, please see the LONG TERM DISABILITY section.

[2]All references to the Employee Handbook are to the complete copy with tabs, located at Def.'s Supplemental Br. Opp'n Pl.'s Mot. Summ. J. [Doc. #34], Ex. B.

Employee Handbook, "Disability" tab.[3] The remainder of the Handbook's section on disability benefits addresses the long-term disability plan.

B. Stoltz's Employment

Stoltz was the manager for quality control at Fenn from 1980 to 1999. On April 14, 1999, he was diagnosed with prostate cancer. He informed Fenn on May 7, 1999 that he planned to take a disability leave beginning May 10, 1999, and he submitted a letter from his doctor stating that he was disabled. Neither party disputes that as of May 10, 1999, Stoltz was entitled to short-term disability payments.[4] Because Stoltz had more than ten years of service at Fenn, the short term disability plan provided him up to twenty-six weeks of disability at full pay. Stoltz's disability ended on September 13, 1999, when his doctor certified that he was able to return to work.

Also in May of 1999, Fenn allegedly discovered evidence that caused it to believe Stoltz had been falsifying quality control reports. On May 20, 1999, while he was on disability leave, Stoltz was asked to come into the office for a meeting with Gary Wolff, Stoltz's supervisor, and John Ballantyne, Fenn's human

[3]The Handbook as a whole lacks page numbers, but several sections have their own discrete numbering system. Counsel for Fenn inserted tabs in the copy of the Handbook that was submitted as an exhibit, which are used as references in this decision.

[4]Ballantyne Dep. vol. II at 105.

resources manager. With all inferences drawn in favor of Fenn, the non-moving party, a fact finder could find that on May 20, 1999, Fenn informed Stoltz that his employment with Fenn was terminated, effective that day.[5]

Although Fenn claims to have terminated Stoltz's employment on May 20, Fenn informed Stoltz that due to his health problems and medical insurance needs, Fenn would execute documents indicating that Stoltz was on a medical leave and remained eligible for group medical coverage under the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 et seq. ("FMLA"), until his disability ended on September 13, 1999.[6]

Fenn has proffered affidavits from Wolff and Ballantyne, in which they that claim the September 13, 1999 date was only a fiction used to ensure continuation of Stoltz's medical coverage,

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[5]See Wolff Aff. ¶ 10 ("As a result of [the falsified documents], I terminated Stoltz on May 20, 1999. I informed Stoltz of his immediate termination during a meeting held on that day."); Ballantyne Aff. ¶ 8 ("On May 20, 1999, I attended a meeting with Gary Wolff and Donald Stoltz. At that meeting, Mr. Wolff terminated Stoltz's employment.")

[6]See Ballantyne Aff. ¶ 10 ("In light of Stoltz's immediate need for medical insurance, the company decided to complete [FMLA] documents, which would entitle Stoltz to receive medical benefits from the company's insurance carriers. Subsequent to his termination, I explained to Stoltz that Fenn was willing to do this in consideration for his medical needs. I explained that although the company would submit the necessary paperwork that would trigger insurance benefits, this in no way represented a change in his status as a terminated employee.").

and that his employment was in fact terminated on May 21, 1999.[7] Fenn also initially told Stoltz that he would continue to receive short-term disability payments after his termination, but Fenn claims that the statement was made in error, and that it subsequently informed Stoltz that he would receive only health benefits while he remained disabled.[8]

II. Analysis

Stoltz's original memorandum in support of his motion for summary judgment for benefits allegedly due under an ERISA-regulated plan[9] appeared to frame the entire entitlement question

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[7]Stoltz was paid short term disability benefits for two weeks, through Friday, May 21, 1999, and claims entitlement to such benefits for an additional fifteen weeks.

[8]Ballantyne Aff. ¶ 11 ("When I first filled out the FMLA paperwork, I mistakenly indicated on the documents that the company would continue to provide Stoltz with disability benefits. I never intended to make this designation; it was simply a typographical error. Since Stoltz had been terminated on May 20, 1999, he was not entitled to disability benefits after that date.").

[9]Count One of Stoltz's complaint alleges that "[Fenn's] failure to pay the benefits inured to the Plaintiff is a breach of their [sic] fiduciary duty," Substituted Am. Compl. ¶ 24, and that as a result of this breach, "the Plaintiff has and continues to be denied the full accrued benefits of the short term disability [plan]," Substituted Am. Compl. ¶ 24. Given that the relief Stoltz seeks is the allegedly improperly withheld benefits, the Court considers this a claim under 29 U.S.C. § 1132(a)(1)(B), which provides that "A civil action may be brought . . . by a participant or beneficiary . . . to recover benefits due to him under the terms of his plan, to enforce his rights uder the terms of the plan, or to clarify his rights to future enefits under the terms of the plan . . . . "

as one of timing: when did Stoltz's employment with Fenn terminate? Fenn claimed Stoltz was no longer an employee as of May 21, 1999, thus terminating Stoltz's entitlement to continued benefits. Stoltz, however, claimed he was employed until September 13, 1999, and that Fenn thus owed him short-term disability benefits for the period of May 21 through September 13.

On the temporal issue, Stoltz would not be entitled to summary judgment as the record clearly demonstrates a genuine dispute of material fact as to when Stoltz was terminated. While Stoltz points to the forms submitted by Fenn showing a September termination date, Fenn has come forward with affidavits explaining that those forms were only a device used to ensure continuation of Stoltz's medical benefits and that he was terminated as of May 21, 1999. Stoltz therefore fails to establish the absence of a genuine issue of material fact on the issue of when his employment was actually terminated by Fenn.

At oral argument on October 18, 2001, Stoltz expanded what initially appeared to have been a minor, undeveloped theory in support of summary judgment, under which he would be entitled to short term disability benefits through September 13 regardless of whether his employment was terminated on May 21 or September 13. Stoltz argues that under the terms of the plan in the Employee Handbook, once he was found eligible for short term disability benefits as of May 10, his entitlement to continue receiving

those benefits continued for as long as he remained disabled, up to the twenty-six week maximum, regardless of when his employment was terminated. After receiving the parties' supplemental briefing and re-hearing oral argument, the Court is persuaded that Stoltz is entitled to summary judgment on the first count of his complaint, for the reasons that follow.

It is undisputed that Fenn's short term disability plan is an "employee benefit plan" regulated by ERISA. 29 U.S.C. § 1002(3). Because Fenn's short term disability plan does not retain any discretionary authority for the plan administrator, the Court reviews Fenn's cessation of Stoltz's short term disability benefits de novo. Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989).

Fenn's plan unambiguously provides that once an employee becomes disabled, he is entitled to up to twenty-six weeks of disability benefits, depending upon the length of his disability and years of service. It is undisputed that as of May 10, 1999, Stoltz was an employee of Fenn, was disabled within the meaning the plan, and had more than ten years of service at Fenn. Thus, as of that date, he qualified for up to twenty-six weeks of short term disability benefits at full pay.[10]

Stoltz claims that neither the plan nor any other section of

[10]Fenn's method of self-funding this plan was to use a salary-continuation formula. Thus, Stoltz was paid his regular wage until May 21, 1999, when Fenn discontinued his benefits.

the Handbook in which it is contained provides that payment of short term disability benefits, once commenced, will cease upon termination of employment. Because there are only two durational terms expressed – length of disability or 26 weeks – Stoltz maintains that termination of employment is not an event that cuts short receipt of these benefits.

Fenn presents two main arguments in opposition to Stoltz's claim. First, Fenn claims that Stoltz does not have standing under ERISA to bring this action. Second, Fenn claims that even if Stoltz has standing to bring this action, it fails on the merits because a fair reading of the Employee Handbook as a whole reveals that benefits are available only to active employees, and that Stoltz's entitlement to benefits thus ended on May 21, 1999, when Stoltz was fired,[11] regardless of when his disability actually ended. Inasmuch as an understanding of the merits aids discussion of the standing issue, the Court will address these arguments in reverse order.

A. The Merits

Fenn contends that reading the Employee Handbook as a whole, the only reasonable conclusion is that all benefits provided for therein cease upon termination of employment, with the exception

[11]Given that this is a motion for summary judgment and there is evidence in the record that shows Stoltz's employment was terminated on May 21, 1999, the Court must treat Fenn's claimed termination date as true for the purposes of this motion.

of retirement benefits. Fenn's supplemental brief begins with the assertion that "benefits outlined in the Fenn Employee Handbook are available for salaried, active employees only," and cites as support the affidavit John Ballantyne, Fenn's Manager of Human Resources, which contains a similar statement. Def.'s Supp. Brief [Doc. #34]. Such a limitation, however, does not appear in the Handbook or any other document that might reasonably be considered part of the plan. Fenn's severance policy, outlined in another section of the Employee Handbook, provides in pertinent part:

> Medical benefit coverage will be extended for two months beyond the month of separation from active employment.
>
> All other group insurance coverage (i.e. dental, life insurance, LTD) ceases on the date of separation from active employment.
>
> * * *
>
> All other coverage and payroll deductions for voluntary plans cease on the date of separation from active employment.

Employee Handbook, "Severance" tab.

Since Fenn could not retrospectively add a new term to an ERISA plan, the Court construes the Ballantyne affidavit as Fenn's interpretation of what the plan provides. This interpretation is not entitled to deference, however, because the plan retains no discretionary authority for the administrator's interpretation, and the Court's determination of the meaning of plan terms will be de novo. Firestone, 489 U.S. 115.

Further, Fenn's reading of its handbook as providing that all employee benefits provided for therein cease upon termination of employment overlooks the specific language of the long term disability plan, which expressly continues benefits after employment terminates if the employee is disabled at the time employment ends:

> If, at the time your insurance would otherwise terminate, you are disabled, your insurance will not terminate until the earliest time applicable according to the maximum benefit period described in the Plan at a Glance Provision," (which provides that payments can continue until age 65 or even later depending on the insured's age when initially disabled, as long as the disability persists.[12]

Fenn's assertion that the only rational way to read the Employee Handbook as a whole is that all benefits cease upon termination of employment is therefore unsupported by the record, because at least some benefits (retirement and long term disability for all terminated employees, and medical benefits for some terminated employees) expressly continue after employment ends.[13] The issue here is whether Fenn's short term disability benefits continue despite termination if the beneficiary was a salaried, active employee when the qualifying disability

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[12]Additionally, the Handbook indicates that for workers laid off due to staff reductions, "[m]edical benefit coverage will be extended for two months beyond the separation from active employment." Fenn characterizes this as an additional benefit plan.

[13]In actuality, retirement benefits do not continue after employment ceases; rather, they commence upon termination.

commenced, or whether such benefits cease upon termination even though disability continues and 26 weeks have not yet elapsed, where the short term disability plan itself is silent on the subject.

While the Handbook's provision terminating insurance coverage provides that "[a]ll other group insurance coverage (i.e. dental, life insurance, LTD) ceases on the date of separation from active employment," Employee Handbook, Severance Tab, Fenn's short term disability plan is self-funded and self-administered, and is thus not "group insurance coverage."[14] Moreover, this short term disability benefit is provided for all salaried employees; it is not an elective, voluntary benefit for which an employee pays some premium. Thus no support can be found for Fenn's proposition that short term disability coverage is subsumed under the handbook language.

Fenn argues that under plaintiff's plan interpretation, employees fired while on disability leave will continue to be paid, while employees fired while actively at work will not. While true, this reality leads nowhere, since working employees who are fired are medically able to secure other employment; disabled employees are not. Thus, the purpose of disability

[14]The fact that the health, dental, life and long term disability insurance benefits are provided under contract with insurance carriers also explains why these plans have such detailed provision regarding eligibility for and termination of benefits, while the short term disability plan is so short, pithy and devoid of detail.

benefits – to replace salary while it cannot be earned – is undisturbed by the fate of non-disabled workers.

Fenn next reasons that the language of the short term disability plan itself precludes benefits for terminated employees, referencing the plan's statement that benefits are paid for those "unable to work due to a nonoccupational illness or injury." Fenn maintains that this phraseology contemplates that those who are unable to work because of their own misconduct are not "disabled" within the plan's purview. Fenn's reasoning does not account for laid off employees where termination is unrelated to their conduct. Moreover, this argument overlooks the fact that even though disabled employees may come to lose their employment while on disability leave, they continue to be "unable to work due to a nonoccupational illness or injury." Simply put, not being permitted to continue employment with Fenn is nowhere an identified disqualifying event under the plan.

Finally, Fenn construes Stoltz's claim as one alleging an inadequate summary plan description, and because Stoltz puts forth no evidence of detrimental reliance, Fenn maintains that no ERISA violation is shown. Since the Court has determined that Stoltz is entitled to benefits under the express terms of the plan itself, not because of a faulty SPD, the existence of reliance is irrelevant.[15] In sum, Fenn's arguments on the merits

[15]The Court notes that the Second Circuit has declined decide whether reliance on an SPD is required, but has noted a

are unavailing, and Stoltz is entitled to benefits under the terms of Fenn's short term disability plan.

B. Standing

Fenn claims that when Stoltz's employment terminated, he lost any standing to sue for unpaid benefits under an ERISA plan. The ERISA section under which Stoltz's claim is most appropriately analyzed, 29 U.S.C. § 1132(a)(1)(B), provides: "A civil action may be brought . . . by a participant or beneficiary . . . to recover benefits due to him under the terms of [the] plan." While Stoltz's suit is undisputedly one for "benefits," Fenn claims that it is not an action by a "participant" for benefits, because Stoltz, after termination, is no longer a participant under ERISA.

ERISA defines a "participant" as:

> any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

29 U.S.C. 1002(7). This definition clearly encompasses Stoltz as a former employee who claims to be eligible to receive a benefit from an employee benefit plan.

In Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101

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circuit split on the issue. Layaou v. Xerox Corp., 238 F.3d 205, 212-213 (2d Cir. 2001).

(1989), the Supreme Court addressed ERISA's definition of "participant" in the context of ERISA's reporting and disclosure requirements, and explained that "the term 'participant' is naturally read to mean either 'employees in, or reasonably expected to be in, currently covered employment,' or former employees who 'have . . . a reasonable expectation of returning to covered employment' or who have 'a colorable claim' to vested benefits." Id. at 117, quoting Saladino v. I.L.G.W.U. National Retirement Fund, 754 F.2d 473, 476 (2nd Cir. 1985) and Kuntz v. Reese, 785 F.2d 1410, 1411 (9th Cir. 1986). Fenn argues that Stoltz is not a current employee or a former employee who plans to return to covered employment, that he is not making a claim for vested benefits, and thus he lacks standing under ERISA to pursue his claim. In support of this argument, Fenn correctly notes that because its short term disability plan is an employee welfare benefit plan ("welfare plan"), rather than a pension plan, its benefits are not required to vest under ERISA. See Moore v. Metropolitan Life Ins. Co., 856 F.2d 488, 491 (2d Cir. 1988) ("welfare plans are expressly exempted from [ERISA's] detailed minimum participation, vesting and benefit-accrual requirements and are not subject to ERISA's minimum-funding requirements. Automatic vesting does not occur in the case of welfare plans"). On that basis, Fenn argues that because Stoltz is claiming benefits from an employee welfare benefit plan, his claim is not "'a colorable claim' to vested benefits," Firestone,

489 U.S. at 117, so he is not a "participant" and thus does not have standing to pursue his claim.

While it is true that ERISA's vesting requirements do not apply to welfare plans, benefits that are already accrued under the terms of the plan itself are due and payable; they are "vested" in the sense that they are "fixed; accrued; settled; [and] absolute." Black's Law Dictionary (6th ed., 1990) (definition of "vested" at p. 1563). The concept of vesting at issue in Metropolitan Life, which explained that welfare plan benefits are not automatically vested under ERISA, touches upon the question of when an employer can change the plan and benefit levels in the future, not divestiture of benefits which one has already become eligible to receive.

Metropolitan Life was a suit by retired Met Life employees who sought to prevent the company from reducing the level of medical benefits it provided to retirees. In rejecting the plaintiff employees' argument that reduction was prohibited by ERISA and the welfare plan documents, the Second Circuit relied on Met Life's express reservation to itself of unilateral discretion to change benefits, which reservation was not prohibited under ERISA:

> With regard to an employer's right to change medical plans, Congress evidenced its recognition of the need for flexibility in rejecting the automatic vesting of welfare plans. Automatic vesting was rejected because the costs of such plans are subject to fluctuating and unpredictable variables. Actuarial decisions concerning fixed annuities are based on fairly stable

> data, and vesting is appropriate. In contrast, medical insurance must take account of inflation, changes in medical practice and technology, and increases in the costs of treatment independent of inflation. These unstable variables prevent accurate predictions of future needs and costs. While these plaintiffs would be helped by a decision in their favor, such a ruling would not only fly in the face of ERISA's plain language but would also decrease protection for future employees and retirees.

856 F.2d at 492.

The Supreme Court addressed an ERISA claim for the wrongful termination of post-retirement health care benefits in Curtiss-Wright Corp. v. Schoonejongen, 514 U.S. 73 (1995), noting that "[e]mployers or other plan sponsors are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate welfare plans." Id. at 78, citing Adams v. Avondale Industries, Inc., 905 F.2d 943, 947 (6th Cir. 1990).

Both Metropolitan Life and Curtiss-Wright, however, involved prospective amendments to welfare plans: the employer determined that from the plan amendment date forward, certain benefits that were formerly available would no longer be available. In contrast, this case is a suit for benefits that the Court has determined Stoltz is entitled to, and is thus clearly distinguishable. Given that Stoltz has a colorable claim to vested benefits, Stoltz is a "participant," and thus has standing to maintain this action.[16]

[16]Indeed, in light of the Court's determination that Stoltz is actually entitled to benefits under the plan, his claim is more than merely colorable.

III. Conclusion

For all of the above reasons, Stoltz has shown that he is owed fifteen additional weeks of short term disability benefits, and that he has standing to pursue those benefits here. Stoltz's Motion for Summary Judgment [Doc. #25] as to Count One of the Substituted Amended Complaint is GRANTED.

IT IS SO ORDERED.

/s/

Janet Bond Arterton
United States District Judge

Dated at New Haven, Connecticut, this _____ day of February, 2002.